

# Gross negligence manslaughter and hindsight

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*To the Editor*—We read with interest the recent Editorial on gross negligence manslaughter.<sup>1</sup> The third defendant in “DR” was employed by a clinic. She intravenously administered to healthy clients processed cells originally harvested from the client. The deceased received infusion on 3 October 2012 and passed away on 10 October from multiorgan failure due to septic shock caused by *Mycobacterium abscessus*. The indictment provided, inter alia<sup>2</sup>:

1. the therapy was experimental for cancer patients, with unproven or uncertain efficacy;
2. there was no scientifically proven benefit on healthy patients;
3. the preparation involved prolonged culturing of blood cells with risk of contamination.

Any intravenous infusion outside a research setting must either be a registered pharmaceutical product of good manufacturing practice standard or comply with stringent quality requirements of a national blood transfusion service. It is foreseeable by any medical practitioner that lack of assurance of sterility would result in microbial contamination. Consideration through hindsight is not involved.

The Rose case is distinguishable.<sup>3</sup> An optometrist performed routine eye examination for a 7-year-old on 15 February 2012, without retinal examination, which would have revealed papilloedema. Five months later, the boy passed away suddenly. The Court of Appeal quashed the gross negligence manslaughter conviction, as the boy was asymptomatic “with no material pre-existing history” in February; the significance of retinal examination was only realised with hindsight.<sup>3</sup> We respectfully submit that the DR decision was consistent with the established gross negligence manslaughter law,

with no significant ambiguity. Medical practitioners managing patients in accordance with standard medical practices would unlikely face criminal sanction.

## Author contributions

Both authors contributed to the drafting of the letter and critical revision for important intellectual content. Both authors approved the final version for publication and take responsibility for its accuracy and integrity.

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